

From: [Vidhya Ram](#)
To: hector.duran.jr@usdoj.gov
Cc: [Jeannie Andresen](#)
Subject: Re: JC Penney bankruptcy - Case No. 20-20182
Date: Tuesday, June 2, 2020 12:43:58 AM

+Jeannie to the email.

On Tuesday, June 2, 2020, 12:39:28 AM CDT, Vidhya Ram <vidhya_ram67@yahoo.com> wrote:

Respected Sir,

My name is Vidhya Sivasankaran. I'm an individual shareholder with JC Penney who invested a sizable amount of my hard earned money trusting the JCP BOD and now seeing my shares/savings vanish in this unprecedented CH-11 bankruptcy proceedings filed by JC Penney management.

Before I begin, I would like to extend immense thanks to the court, Honorable Judge David R. Jones to post the proceedings of the case and the audio recordings on prime-clerk, which helps mom and pop shareholders like us listen to the proceedings and educate ourselves on the CH-11 process. It is heart warming to see the judge lend a patient ear to common shareholders like us.

I also want to extend my sincere thanks to you in enabling shareholders like us having a voice and express our opinions. This is new to me and I'm not sure how and if possible this letter can be added to the docket as well.

I had a chance to review Rahul Shekatkar's letter and petition and he has done a very good analysis of the situation as an individual shareholder, to the best extent possible.

During the Covid shutdown, or during all the rumors floating in the news regarding the bankruptcy - we as investors did not hear any communication from JCP BOD. Based on this, we assumed things are ok and not dire financially. The JCP BOD was almost incommunicado regarding the restructuring or BK filing until up to the last minutes on May 15th. Not updating the shareholders through their investor relations I think is a breach of fiduciary duty.

As an individual investor, I did some due diligence on the stock before investing into it and looked into JCP's liabilities carefully:

ABL credit facility maturity	: 6/20/2022 :	\$1.18 B
2016 Term loan maturity	: 06/23/2023:	\$1.521 B
First Lien notes maturity	: 07/01/2023:	\$500M
Second Lien Notes maturity	: 03/15/2025:	\$400M

Unsecured Notes maturity	: 2023-2097:	\$1.318B
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The earliest maturity on the loan is 06/20/2022 which is 24 months away. They also had cash/cash equivalents ~\$386M and withdrew ABL revolver ~\$1.2B. With sufficient funds in hand and debt maturity two years away, why is JCP BOD throwing in the towel and approaching CH-11 BK.

Also JCP has submitted to the court that they have unencumbered real estate for ~\$1.4B(lit) vs \$700M unlit.

The cash on hand + the real estate (on which they could have taken additional debt) alone should have been sufficient to weather the pandemic till the date of the debt maturity.

We hear from news that airline is one of the worst affected industries in this pandemic and we are hearing some airlines have a cash burn rate of \$25-\$50M / month and those airlines are taking prudent approaches to weather this pandemic without rushing to BK proceedings.

Below are some of the questions that come to my mind for which I think we as share holders need answers from JCP BOD and if JCP BOD is found to be fraudulent or not meeting their fiduciary duty to shareholders - then appropriately prosecuted.

1. what was JCP cash burn rate/month from the date they closed operations until they re-opened recently. Was the \$1.5B liquidity available not enough to offset the cash burn rate and weather through the covid-situation?
2. I understand from JCP filings that they had options to borrow additional debt. Why was that not considered? We see Macy's recently issued debt and it was over-subscribed? The management was very confident even during the last earnings release that their turn-around plan is working 5/6 quarters of meeting or exceeding milestones. If covid was a short bump in the road, which could have been navigated with short term liquidity infusion - was the JCP management not confident in their turn-around plan? It looks like as if the BOD was waiting for an opportunity to throw in the towel and covid came along the way to their help. Then, did the management lie to the investors that the turn-around plan was working before the covid-situation. Were the shareholders defrauded by JCP BOD?
3. On May-15, before the announcement of BK - JCP went ahead and paid \$17M interest on their loan. If the intent was to file BK, why splurge and spend the money on interest payment without negotiating with the creditors? In addition, they also paid April rents when other retailers
4. And on May15th morning, JCP shares were halted trading on NYSE pending news for almost an hour. No new news came from either the JCP investor relations or from JCP BOD/CEO. Why was the stock halted trading on May 15th morning. The only filing we saw later was the \$17M interest payment referenced above. And subsequently JCP filed for BK in the evening. What happened between the morning to evening on May15th and why was the BK delayed till the evening? If it was delayed, then why was teh \$17M paid as interest for the loan?
5. Just a few days before the, JCP BOD modified their incentive plans payments due only on achieving certain milestones end of fiscal 2021. The BOD then modified the compensation plan and lined their purses to the total amounts as follows: \$4,500,000 for Jill Soltau, Chief Executive Officer, and \$1,000,000 for each of Bill Wafford, Executive Vice President, Chief Financial Officer, Michelle Wlazlo, Executive Vice President, Chief Merchant, and Brynn L. Evanson, Executive Vice President, Chief Human Resources Officer.

It is an irony that when many of the associates were furloughed, many of the share holders getting wiped out the JCP BOD and management thought of lining their pockets prior to filing BK. We have seen other companies in the retail sector do the opposite (for example TLRD) where all the BOD is taking a pay-cut to travel through these uncertain times.

I heard this in Mr.Sussburg's deposition quoting the famous James Cash Penney that haunts me to this day:

"Treating others as you would like to be treated"

" The ethical means by which me and my associates made money is more important than the fact that we acheived business success"

Looking at what the JCP BOD did to line up their pockets just before the BK filings clearly shows that they not only followed James Cash Penney's words, but also lost the trust of their associates, employees and shareholders. To me, the JCP board and the CEO has lost the trust/confidence to continue executing the vision of its founder famous Mr.Penney and should be removed if possible in the interest of the future of this company.

Thanks and Regards,
Vidhya Sivasankaran

PS: I kindly request to add this letter to the BK case as another submission from a common shareholder.